

### REMARKS

The Action requires an election from the following patentably distinct inventions:

Invention I, Claims 1-30, drawn to a method for determining the *in vivo* clinical efficacy of a treatment in a subject, classified in class 424, subclass 9.2.

Invention II, Claims 31-42, drawn to a method of evaluating a subject, classified in class 600, subclass 300.

Invention III, Claims 43-69, drawn to a detection system for detecting fluorescence in a subject, classified in class 424, subclass 9.6.

Invention IV, claims 70-88, drawn to an implantable fluorescence sensor, classified in class 422, subclass 82.08.

Invention V, Claims 89-104, drawn to a computer program product for evaluating a subjects *in vivo* response, classified in class 700, subclass 1.

Applicant hereby elects the Invention III claims with traverse. The Action noted the potential for rejoinder where applicant elects product claims, and the process claims if including the limitations of allowable product claims will be considered for rejoinder. Hence, the Group I and II method claims have been identified as withdrawn pending this outcome. Applicant has also amended the Group IV sensor claims to depend from the system claims. Applicant has canceled the Invention V claims without prejudice subject to pursuit in a future divisional.

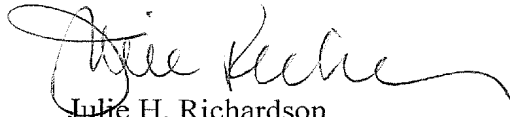
Applicant has added new Claims 105 and 106, which correspond to Claims 43 and 70, as amended in Article 34 Amendments in the corresponding PCT application.

In re: Black et al.  
Application No. 10/779,907  
Filed: February 17, 2004  
Page 19

### CONCLUSION

Applicant respectfully submits that this application is now in condition for substantive examination, which action is requested. If any extension of time for the accompanying response or submission is required, Applicant requests that this be considered a petition therefor. The Commissioner is hereby authorized to charge any additional fee, which may be required, or credit any refund, to our Deposit Account No. 50-0220.

Respectfully submitted,

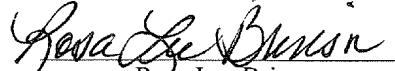


Julie H. Richardson  
Registration No. 40,142

Myers Bigel Sibley & Sajovec, P.A.  
P. O. Box 37428  
Raleigh, North Carolina 27627  
Telephone: (919) 854-1400  
Facsimile: (919) 854-1401  
Customer Number 20792

#### CERTIFICATION OF TRANSMISSION

I hereby certify that this correspondence is being transmitted electronically to the U.S. Patent and Trademark Office on December 15, 2006.

  
Rosa Lee Brinson